

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

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LEWIS COSBY and KENNETH R. MARTIN, as	:	No. 3:16-cv-121
beneficiary of the Kenneth Ray Martin Roth IRA, on	:	
behalf of themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
KPMG LLP and SCOTT M. BORUFF,	:	
	:	
Defendants.	:	
	:	
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**MOTION TO DISMISS OF KPMG LLP**

KPMG LLP (“KPMG”) moves the Court, pursuant to Rule 12(b)(6), to dismiss the Amended Class Action Complaint. Plaintiffs’ two claims against KPMG, under Section 10(b) of the Securities Exchange Act of 1934, based on KPMG’s work as auditors for Miller Energy Resources, Inc., must be dismissed. *First*, Plaintiffs have not alleged facts giving rise to the “strong” inference of scienter required by the Private Securities Litigation Reform Act, 15 U.S.C. §78u4(b)(3)(A). *Second*, Plaintiffs have not pleaded loss causation under *Dura Pharmaceuticals v. Broudo*, 544 U.S. 336 (2005). *Third*, filed more than two years after discovery of the relevant facts, the claims are time-barred under 28 U.S.C. § 1658(b). *Fourth*, the “scheme” liability claim (Count Five) fails for the additional reason that it is invalid under *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2007).

KPMG further relies on its Memorandum of Law and the Declaration of Tera Rica Murdock, with accompanying exhibits, each of which is filed contemporaneously herewith.

KPMG requests that the Court grant its motion to dismiss. Because Plaintiffs have already amended their complaint once, and because the grounds for dismissal are insurmountable, KPMG request that dismissal be with prejudice.

Dated: July 7, 2017

Respectfully submitted,

s/ Paul S. Davidson

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 7, 2017, a copy of the foregoing was filed electronically and served via the Court's CM/ECF system on the following:

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And via first-class mail upon the following:

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s/ Paul S. Davidson  
\_\_\_\_\_  
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